



UNITED STATES PATENT AND TRADEMARK OFFICE

JO
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,776	03/23/2004	Ronald Anthony Schmaltz	1993-1-5	4287
7590	07/28/2004		EXAMINER	
Mr. John M. Janeway Graybeal Jackson Haley LLP Suite 350 155 - 108th Avenue NE Bellevue, WA 98004-5973				FRISTOE JR, JOHN K
		ART UNIT		PAPER NUMBER
		3754		
DATE MAILED: 07/28/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/807,776	SCHMALTX, RONALD ANTHONY
	Examiner	Art Unit
	John K. Fristoe Jr.	3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 13-19 and 22 is/are rejected.
- 7) Claim(s) 20 and 21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 March 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/23/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Although this is the first Office action in response to the filing of this Application, this Office action has been made Final due to the fact that the current claims have been previously examined in the parent Application (Application No. 10/116,571). A first Office action was mailed for Application 10/116,571 on 10/21/2003 and Claims 1-12, 23, and 24 were indicated as allowable, claims 13-19, and 22 were indicated as rejected over prior art, and claims 20 and 21 were indicated as objected to and would be allowable if rewritten in independent form. The examiner repeated this rejection in a final Office action mailed 2/20/2004. An after final amendment was filed 3/26/2004 that canceled claims 13-22 and subsequently the after final amendment was entered and a Notice of Allowability was mailed 4/27/2004. Currently, claims 13-22 are pending in the current Application and these claims are identical to the claims that were previously examined in Application 10/116,571.

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

Priority

2. The current Application was filed as a divisional Application to Application No. 10/116,571. However, since there was no restriction of invention done in the prior

Application, the current Application should have been filed as a continuation.

Appropriate correction is required.

Information Disclosure Statement

3. The information disclosure statement filed 3/23/2004 is acknowledged by the examiner.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,092,856 (Johnston) in view of U.S. Pat No. 4,172,580 (Raftis et al.). Johnston discloses a valve for controlling the flow of fluid through a tube comprising a valve body (20), a passage (30), a tube (30), the housing including a cavity (fig. 3, chamber where tube (15) is located), a closed end (28), a plunger (25) that pinches a portion of the tube (30), the cavity (fig. 3, chamber where tube (15) is located) including a longitudinal axis that is perpendicular or substantially perpendicular to the longitudinal axis of the passage (fig. 3), the plunger (25) includes a circular plate having a drain tube contact surface (26) that is convex (fig. 3), and a coil spring (31) but lacks a bar attached to the body that the plunger occludes the tube against. Raftis et al. teaches the use of a straight (fig. 2) cylindrical (fig. 3) bar (36) attached to the body and extending through the passage wherein a plunger (38) pinches a portion of the tube (44) against the bar (36) to prevent flow of fluid through the tube (44). It would have been obvious to one of ordinary skill

Art Unit: 3754

in the art at the time the invention was made to modify the pinch valve of Johnston by replacing the plug (36) with a cylindrical bar to occlude the tube when the plunger is in the closed position as taught by Raftis et al. in order to more effectively occlude the tube by creating a linear contact between the bar and the tube instead of a surface contact.

3. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,092,856 (Johnston) in view of U.S. Pat No. 4,172,580 (Raftis et al.) as applied to claim 13 above, and further in view of U.S. Pat. No. 3,807,453 (Dom et al.). Johnston modified above, discloses a valve having a plunger that occludes a tube against a cylindrical valve but lacks the housing of the valve being made of acrylonitrile butadiene styrene plastic. Dom et al. teaches the use of making a valve housing out of acrylonitrile butadiene styrene plastic (col. 9, lines 59-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the pinch valve of Johnston by making the valve housing from acrylonitrile butadiene styrene plastic as taught by Dom et al. in order to make the valve housing more durable and light weight so that the valve will be resistant to damage by the user.

Allowable Subject Matter

4. Claims 1-12, 23, and 24 are allowed.

5. Claims 20 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. This is a continuation of Applicant's earlier Application No. 10/116,571. All claims are identical to those claimed in the earlier application and were rejected in the

Art Unit: 3754

final Office action mailed 2/20/2004. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John K. Fristoe Jr. whose telephone number is (703) 308-1437. The examiner can normally be reached on Monday-Friday, 7: 00 a.m-4: 30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Louis G. Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John K. Fristoe Jr.
Examiner
Art Unit 3754

JKF


EDWARD K. LOOK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700